

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MELVIA WILSON,

Plaintiff,

v.

**STATE OF OREGON, DEPARTMENT
OF HUMAN SERVICES, et al.,**

Defendants.

Case No. 3:20-cv-01819-JR

OPINION AND ORDER

MOSMAN, J.,

On November 4, 2021, Magistrate Judge Jolie A. Russo issued her Findings and Recommendation (“F&R”) [ECF 53], recommending that I grant Multnomah County defendants’ Motion to Dismiss [ECF 31], the State of Oregon defendants’ Partial Motion to Dismiss [ECF 33], and that I construe Plaintiff Melvia Wilson’s filing of her Second Amended Complaint [ECF 52] as a motion for leave to amend, and deny it. Wilson filed objections to the F&R on November 23, 2021 [ECF 56]. Upon review, I agree with Judge Russo. I GRANT the motions to dismiss and construe the second amended complaint as a motion for leave to amend, which I DENY.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge


but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

Upon review, I agree with Judge Russo's recommendation and I ADOPT the F&R [ECF 53]. I GRANT Multnomah County defendants' Motion to Dismiss [ECF 31] and the State of Oregon defendants' Partial Motion to Dismiss [ECF 33]. I construe Wilson's filing of her Second Amended Complaint [ECF 52] as a motion for leave to amend. I deny the motion for leave to amend without prejudice inasmuch as Wilson wishes to pursue a First Amendment Claim and breach of contract claim against Multnomah County.

IT IS SO ORDERED.

DATED this 19th day of January, 2022.


MICHAEL W. MOSMAN
United States District Judge